

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

September 23, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 23, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the Board of Supervisors Chambers. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls Cecelia Kirkman, John Overbey, Steven Beauch and Robert Gibbons

Members Absent: None

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Gail Roberts, Deputy County Attorney
Aisha Hamock, Recording Secretary

Mr. Ackermann asked if there were any changes to the advertised agenda.

Mrs. Musante stated there were no changes to the advertised agenda.

Motion:

Mr. Ingalls made a motion to move item 4 regarding Wayne N. Jordan to item 2 on the agenda.

Mr. Gibbons seconded the motion.

Vote:

The motion to move item 4, Wayne N. Jordan, to number 2 on the agenda passed 6-0.

Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Beauch – yes

DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls stated in the case of A08-4/2800483 and A08-5/2800567, from time to time the firm he works for Sullivan, Donahue and Ingalls (SDI) share the same clients with Mr. Leming. He stated SDI had not worked on this project with Mr. Leming and he did not personally represent Mr. Leming's firm or Quarles Petroleum. He stated he had not had any contact with Mr. Leming or his firm concerning any matters before the Board, therefore, he would be able to fairly and objectively participate in the discussion on the cases

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before the Board. He stated in the same cases the firm that he worked for SDI provided consultant service to the company Quarles Services, LLP which possibly had some relationship to the applicant Quarles Petroleum. He stated SDI had not worked or provided any services related to the cases before the Board and had not had any contact with any persons representing or associated with Quarles Petroleum Inc and did not personally represent Quarles LP or Quarles Petroleum Inc.

PUBLIC HEARINGS

1. **SE08-5/2800352 - UK KANG** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", to allow the production of Soy Sauce/Paste as a Rural Home Business on Assessor's Parcel 59-56D. The property zoned A-1, Agricultural, is located at 415 Forest Lane Road.

Mrs. Musante read the staff report. She stated the applicant has 1,860 square foot shed to produce the soy paste sauce. She stated the property was 23 acres with vegetation, which provides screening from adjacent properties. She stated the outdoor storage was 3,100 feet and in compliance with the requirement of no more than 25 percent of the property on which the business is located. The applicant indicated there were no employees. She stated the single-family home was constructed in 1998 and a permit for a 62' by 30' shed was issued in 2007; a permit for a 36' by 86' pole barn was issued in April 2008.

Ms. Kirkman stated the Board had asked that the Zoning Administrator be present to answer question regarding this case. She stated there were a number of questions that the Board had at the last public hearing. She stated when the case was first presented in June there were a number of questions regarding a zoning violation and why this was not considered a By-Right Agricultural use. She asked Ms. Hudson if there had been a violation issued.

Ms. Hudson stated no.

Ms. Kirkman asked for the reason the applicant was advised to apply for the Special Exception and why the activities were not considered a by-right use in agricultural.

Ms. Hudson stated the definition of agricultural was the growing of products and Mr. Kang did not grow anything on his property, which was why it was not considered a by-right agricultural use.

Ms. Kirkman stated the applicant was growing bacteria to produce the product. She stated that was not traditional farming in the U.S. but in other countries was considered a very important part of farming. She asked if the applicant could clarify what was being done within the barrels and would that make a difference.

Ms. Hudson stated yes.

Ms. Kirkman stated the advice to the applicant was to apply for the Special Exception and asked if Zoning was confident, if the application was approved then Mr. Kang would be in compliance.

Ms. Hudson stated yes.

Ms. Kirkman stated there were several wineries in the county and asked under what use did they operate.

Ms. Hudson stated farm wineries are an agricultural use.

Ms. Kirkman stated how that was declared because it was not listed in the table of uses.

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Ms. Hudson stated wineries were declared by the Commonwealth of Virginia as farm uses.

Ms. Kirkman stated the ordinance did not define wineries as an agricultural use. She stated the county wineries ferment grapes and soybean paste ferment soybeans and asked what was the difference in the process.

Ms. Hudson stated the State authorized wineries to be by-right farm uses.

Ms. Kirkman asked the difference in fermenting soybeans and fermenting grapes.

Ms. Hudson stated she could not answer that.

Mr. Overbey stated the difference was that the county wineries raise the grapes on their property.

Ms. Kirkman asked how the process was different.

Mr. Overbey stated he was not familiar with fermenting soybeans but, in his opinion, there may not be any difference. He stated the difference was the transportation of the soybeans to be fermented.

Mr. Ackermann opened the public hearing.

UK Kang and Charles Kim stated he was translating for Mr. Kang. Mr. Kim stated Mr. Kang was requesting an Exception to produce and ferment soy sauce and paste. He stated he would need a building facility that had fresh air and sunlight. He stated the product was not produced inside closed areas. He stated the recipe was from Korean tradition

Mr. Gibbons asked if there were any employees.

Mr. Kim stated currently the applicant and his wife manufacture the product by themselves.

Mr. Gibbons asked if the pole barn could be enclosed.

Mr. Kim stated the air needed to be circulated well for the fermentation process.

Mr. Gibbons asked if the building was enclosed with walls would the applicant be legal.

Mrs. Musante stated the applicant was allowed a total of 4,000 square feet of non-residential building devoted to the Rural Home Business. She stated the applicant could have had more than one enclosed building to operate the business.

Mr. Gibbons asked about the current square footage.

Mrs. Musante stated the applicant had a 1,860 square feet building being used and the pole barn was 3,100 square feet. She stated the applicant could enclose a portion of the pole barn to be used.

Mr. Ackermann asked the applicant what the volume of soy paste/ sauce was.

Mr. Kim stated approximately twelve tons a year.

Mr. Ackermann asked if the process was year round.

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Mr. Kim stated yes.

Mr. Ackermann asked for the manufacturing process to be described.

Mr. Kim provided the details of the manufacturing process.

Mr. Ackermann asked how the soybeans were transported.

Mr. Kim stated one ton per month would be transported from the property to buyers. He stated the product would be packaged into bottles for transportation.

Ms. Kirkman asked what was in the barrels on the property.

Mr. Kim stated the soybean paste was inside of the barrels.

Ms. Kirkman stated the pictures showed the barrels while fermenting.

Mr. Kim stated yes.

Ms. Kirkman asked where the soybeans would be stored before there put in the barrels.

Mr. Kang stated when the soybeans are purchased, they would be cleaned and barreled immediately.

Ms. Kirkman confirmed that the barrels did not only contain soybeans.

Mr. Kang stated the soybeans were placed in the barrels of salt water.

Mr. Beauch asked where the soybeans come from.

Mr. Kang stated they were purchased from Korea.

Mr. Overbey asked how the finished product was distributed.

Mr. Kang stated he would send orders to different companies.

Mr. Overbey asked if there was a retailer or distributor that received the product.

Mr. Kang stated he had a company in Annandale that received his product.

Mr. Overbey asked if then the distributor would sell to retailers.

Mr. Kang stated yes.

Mr. Overbey asked how the waste would be disposed of.

Mr. Kang stated there was no waste.

The Board discussed with the applicant in detail the process for bottling the product.

Mr. Ackermann opened the public hearing for public comment.

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Cindy Hall stated she was opposed to this application. She stated her family could hear, see and smell the production of the product. She stated she felt this was a full-scale manufacturing business that could affect the property value of the area. She stated the applicant worked late into the evening hours using large spot lights to work and had tractor trailers coming in for deliveries. She stated the Kang's have a right of way at the front of the property and a twelve month stream that adjoined both properties. She stated there was a seventy-two inch culvert that the stream flows through and it was sinking in the middle. She stated her family had repaired the culvert and felt the culvert may not be holding up because of the tractor trailers that visit Mr. Kang's property. She read a letter from Karl and Carol Koons at 77 Windy Ridge Lane, which stated their opposition of the application. She read that the Koons were concerned with the waste from the making of the product and the possibility of contamination of the well water in the area.

Donnie Hall stated his property was 615 feet from the processing building. He stated this was supposed to be a small operation. He stated there were over 1,000 barrels on the property and there would be soybean waste and runoff. He stated the applicant has a well that would produce 60 gallons of water per minute for this process.

Mr. Ackermann closed the public hearing for public comment.

Mr. Kang stated the Board was welcome to come out to the property to view the process and see there is no smell. He stated he never disposed of any soybeans on the property and would never throw away any sauce. He stated with the longer fermentation process the soy sauce tastes better.

Mr. Kim stated at any time the Board was welcome to visit the property. He stated there was no waste on site and no smell at all.

Ms. Kirkman asked as a condition of getting approval would the applicant be willing to place trees to screen from the neighbors.

Mr. Kang stated yes.

Ms. Kirkman asked if the applicant would restrict the hours of operation when heavy machinery was being used.

Mr. Kang stated yes.

Ms. Kirkman asked if the applicant would agree to set up a proper method of waste disposal.

Mr. Kang stated yes.

Mr. Ackermann closed the public hearing.

Motion:

Mr. Gibbons made a motion to delay the decision to allow the Board an opportunity to visit the property .

Ms. Kirkman seconded the motion.

Mr. Overbey stated he would not support that motion because the application had been dragged out for so long and the applicant needed a decision.

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Mr. Ingalls stated he had a hard time supporting the motion also. He stated the manufacturing process is getting bigger each day and would have a hard time supporting the application even if he had seen the sight. He stated he did not feel the applicant fit into the Rural Home Business category and may be in the wrong area. He stated the Board would have a hard time coming up with conditions that would make the business compatible with the neighbors.

Mr. Beauch stated he agreed with Mr. Ingalls.

Vote:

The motion to delay the applicant failed 2-3-1.

Mr. Ackermann – abstained

Ms. Kirkman – yes

Mr. Ingalls – no

Mr. Overbey – no

Mr. Gibbons – yes

Mr. Beauch – no

Motion:

Mr. Overbey made a motion to deny the request for a Special Exception SE08-5/2800352.

Mr. Beauch seconded the motion.

Mr. Overbey stated he made the motion as he did not believe that the application fit into the category of a Rural Home Business and already had a negative impact on the neighborhood. He stated in the Special Exception if the application affected the property values of the neighbors then the Board should not approve the request as a Special Exception.

Mr. Ackermann stated regarding the property values of the neighbors the Board only heard opinions of neighbors and did not have definitive information.

Mr. Beauch stated he seconded the motion for similar reasons and property value was not a factor in his vote. He stated a soy paste factory did not fit any of the definitions provided.

Mr. Gibbons asked staff if the combined buildings were 4,960 square feet.

Mrs. Musante stated that was correct.

Mr. Gibbons stated if the applicant closed in everything but 960 square feet and did not use the outside space, then the applicant could use his property.

Mrs. Musante stated it was possible for the applicant to qualify for the home business, which was a by right use.

Ms. Kirkman stated she opposed the motion to deny the application because: 1) the only reason the applicant was present was because staff told him to apply for the Special Exception and the Zoning Administrator stated in her opinion this would be the appropriate solution, 2) the thinking behind agricultural uses is very broad and did not see this being any different than wineries. She stated the applicant was doing something

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different than what most agricultural use were doing and did not smell nearly as bad as hog farming, which was a by-right use. She stated she felt this was a small business and the applicant came to the BZA on good assurance and worked with staff to correct the problem. She stated the Board should do what they can to correct the problem for the applicant and according to staff, the application met the rural home business definition.

Mr. Ingalls asked Ms. Kirkman if she was stating this is an agricultural business.

Ms. Kirkman stated the Zoning Administrator advised the Board that wineries were a by right agriculture use and the only difference in producing soy paste and producing wine was the use of soybeans instead of grapes.

Mr. Ingalls asked if this was an agricultural business.

Ms. Kirkman stated it was the same as wineries, which were considered a by right agricultural business.

Mr. Ingalls stated if Ms. Kirkman considered this an agricultural business, the Rural Home Business could not be granted because it was a non-agricultural business, by definition.

Vote:

The motion to deny the applicant failed 3-3.

Mr. Ackermann – no

Ms. Kirkman – no

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – no

Mr. Beauch – yes

Motion:

Mr. Gibbons made a motion to approve the application with the conditions that the culvert be repaired, traffic reduced to normal daylight hours, screen the property from neighbors and ensure the runoff or cleaning of the product was done properly.

Mr. Gibbons asked that one of the conditions be that the business would run with the owners of the property.

Ms. Kirkman stated the County Attorney has issued an opinion regarding Special Exceptions not being tied to the owner but would run with the land.

Mr. Gibbons stated he had not heard anything regarding that.

Ms. Kirkman seconded the motion with a friendly amendment to specify daylight hours

Mr. Gibbons stated the hours of operation would be 6:00 AM to 6:00 PM.

Vote:

The motion to approve the applicant failed 3-3.

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Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – no
Mr. Overbey – no
Mr. Gibbons – yes
Mr. Beauch – no

2. **SE08-8/2800597 - WAYNE N. JORDAN** - Requests a Special Exception per Stafford County Code, 28-35, Table 3.1, "District Uses and Standards", to allow an office for estate planning as a Home Business on Assessor's Parcel 29C-1-29. The property is zoned PD1, Planned Development, located at 15 Francis Court, Austin Ridge Subdivision.

Mrs. Musante read the staff report and listed the items the Board received. She stated the applicant had one employee and the applicant would not have clients coming to the home. She stated the home was 2,258 square feet and the area proposed for the business would be 457 square feet, which did not exceed the 25 percent allowed. She stated development conditions may be days and hours of operations, customers by appointment only and to provide off street parking.

Mr. Gibbons asked if a Rural Home Business would run with the property.

Ms. Kirkman stated yes.

Mr. Ackermann opened the public hearing.

Nora Harquest and Wayne Jordan stated they have an estate planning business out of their home and do workshops for seniors mostly at senior communities. Ms. Harquest stated she would visit the homes of clients to do estate planning. She stated there was one employee who comes to the home Monday through Friday from 8:30 AM to 4:30 PM and does backup work for the business.

Mr. Ingalls asked if the applicant would run an office out of the home with no clients coming to the home.

Ms. Harquest stated yes.

Mr. Ingalls asked if the applicants would need a sign.

Ms. Harquest stated there would not be a sign.

Mr. Ingalls asked if he lived in the neighborhood, would he know business was being conducted at this property.

Ms. Harquest stated no.

Mr. Overbey asked if the Board should set days and hours of operation in the event the applicant had clients come to the home.

Ms. Harquest stated the days and hours of operation would be 8:30 AM to 4:30 PM, Monday – Friday with no weekends or holidays.

Mr. Ackermann opened the public hearing for public comment.

Mr. Ackermann closed the public hearing for public comment.

Motion:

Mr. Ingalls made a motion to approve the Special Exception application for the operation of an office for estate planning as a home business with the following conditions: no clients permitted at the home and days and hours of operation would be 8:30 AM to 4:30 PM, Monday – Friday with no weekends or holidays.

Mr. Overbey seconded the motion.

Mr. Ingalls stated he made the motion because he felt it met the requirements of a home business and the applicant would not have clients at the home.

Mr. Overbey stated he supported the motion for the same reasons stated by Mr. Ingalls.

Mr. Gibbons stated he supported the motion, but disagreed that the business would run with the property and not with the owners of that property.

Vote:

The motion to approve the Special Exception SE08-8/2800597 with the conditions no clients permitted at the home and days and hours of operation would be 8:30 AM to 4:30 PM, Monday – Friday with no weekends or holidays passed 6-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

3. **A08-4/2800483 - H. CLARK LEMING** - Appeal of a Notice of Violation dated June 6, 2008 for the installation of a propane storage and distribution tank without a Conditional Use Permit on Assessor's Parcel 13-9. The property is Zoned M-1, Light Industrial, located at 4022 Jefferson Davis Hwy.

Ms. Kirkman asked if the Board would hear both cases A08-4/2800483 and A08-5/2800567 together or separately.

Mr. Overbey suggested that the presentation for both cases be heard together.

Mr. Ingalls stated each case could be voted on separately after hearing them together.

Mrs. Musante read the staff report.

Ms. Kirkman asked if there were any other propane distribution facilities in the county.

Ms. Musante stated there was one requested in 2003 and was required to get a Conditional Use Permit (CUP) on Jeff Davis Hwy.

Ms. Kirkman asked if these types of propane facilities would require a CUP.

Ms. Musante stated yes.

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Mr. Ackermann opened the public hearing.

Clark Leming, Leming and Healy, stated to his knowledge there were no facilities like the one referenced in the County. He stated there was a case denied that came before the Board of Supervisors a few years ago. He stated one case was an appeal of a violation and the other case was an appeal of the Zoning Administrator's determination indicating that a Conditional Use Permit (CUP) was required for a propane distribution tank. He provided a picture of the facility for the Board to view and stated the tank at the Hilldrup site was fenced in and was not adjacent to any other properties other than the Hilldrup site. He stated the circumstances that brought the applicant before the Board were unusual because the facility had already been constructed and in business for two years. He stated the facility was constructed pursuant to three building permits issued by the county. He stated the applicant contacted staff and inquired about the CUP and the applicant was advised that they would only need to obtain building permits; each permit was attached as exhibit A, B and C and attached to the letter from Mr. Leming. He stated there were three permits and each for something different, exhibit A was for concrete piers and the tank, and applicant receipt attached, exhibit B was for the electrical and exhibit C was for the gas tank itself. He stated in addition to what was provided to Board was exhibits D, E and F which were documents that showed the reviews conducted by county staff in conjunction with the building permits issued. He stated exhibit D would correspond with exhibit A, which was the commercial building permit for concrete piers and the tank. He stated the zoning reviews, according to county records, were approved on August 30, 2006 and the second permit the zoning review was waived. He stated staff indicated in the staff report that the zoning review was waived for the other permits. He stated he inquired about what a waiver was and who made the decision to approve a waiver. He stated staff would determine whether to waive a zoning review. He showed documentation listing the fees paid for each of the three permits. He stated exhibit A had a fee paid for zoning and no indication of any waiver; the second permit indicated a fee for the zoning review with no waiver and the implication was after the first zoning review was conducted, another review would not be necessary. He stated in the staff report, staff indicated the fee was waived and it was not. He stated Ms. Roberts indicated a zoning review was not performed and was inconsistent with the documentation the county provided. He stated according to the county, once a building permit is submitted a zoning review was conducted to ensure it was in the correct zoning district and the application was in compliance with the zoning ordinance. He stated the determination made by Ms. Hudson was an incorrect interpretation of the zoning ordinance; under Virginia Code 15-2.2311, which stated when a written decision or determination is made by an administrative officer, it can not be amended, modified or reversed after 60 days in the absence of fraud. He stated the building permits represented a determination made permitting the application to go forth and for construction to occur. He stated it was his position that Virginia Code 15-2.2311 would prevent the county from changing the recommendation made in 2006. He stated the propane gas provided to county residents was a by right use in the M-1 district. He stated there was no basis for the violation issuance and asked for a determination and Ms. Hudson stated a CUP was needed.

Mr. Ackermann asked if the distribution of the propane went to individual homes.

Mr. Leming stated yes.

Ms. Kirkman asked if someone from Code Administration could explain what the review consisted of.

Mrs. Musante stated all permits were submitted through Code Administration and then would be routed to specific departments for reviews that were required for permits.

Ms. Kirkman asked who would review for zoning.

Mrs. Musante stated she reviews all commercial permits and Evelyn Keith reviews all residential permits.

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Ms. Kirkman asked what the review would consist of.

Mrs. Musante stated commercial permits consist of checking site plans and if there was a new building checking to see what the applicant was doing.

Ms. Kirkman asked if the reviews were done to see if it was an allowed use or if the site plan or construction was consistent with the zoning ordinance.

Mrs. Musante stated she would review whether it met the site plan requirements and for the use.

Mr. Ingalls stated Mr. Leming said Ms. Roberts stated in her response that a commercial zoning revision was not done; it really stated a commercial change permit for the foundation pier was also issued after a zoning review was done. He stated Ms. Roberts stated she agreed that the zoning review was done and then she goes on to say: because the permits did not constitute a written order, requirement, decision or determination under Code of Virginia 15-2.2311(c); his interpretation was a review was done but was not an official written order, requirement, decision or determination and therefore the 60 days was inapplicable.

Mr. Leming stated on page 2 it stated information was attained prior to the issuance of mechanical permits or pier permits therefore a review was not performed. He stated that was inconsistent with the records the Board had and in his opinion, a building permit would indicate a written decision or determination that was made because a permit could not be issued unless a determination was reached. He stated it was his position that there was no violation of any local ordinance and what was done was consistent with the ordinance. He stated it met the definition under light industrial use and public facility.

Ms. Kirkman asked if these permits constituted a decision or determination.

Mr. Leming stated yes.

Ms. Kirkman stated the permit was signed by Robert S. Marshall and asked if he was a Zoning Administrator.

Mr. Leming stated that did not matter, under State Code 15-2.2311 (c), any order of any administrative officer would bind the county.

Gail Roberts, Deputy County Attorney, stated she would discuss the violation and how it occurred. She stated the Code Administration department received an inquiry from another propane company to see what they would need to put a propane facility on the property. She stated the Code Administration department advised a CUP would be needed and they inquired about the facility at Hilldrup and found out there was a storage facility at Hilldrup that did not receive a CUP. She stated the definition on public facilities provided in O06-01. She stated at the time the decision was made for the facility it did not qualify under a public facility according to the ordinance adopted in October 2006. She stated regarding the zoning review and after speaking with Ms. Hudson and Code Administration staff, staff believed the propane tank would have been for Hilldrup use and would support that business.

Mr. Gibbons asked when the application filed.

Mrs. Roberts stated the application was submitted August 23, 2006 and issued August 30, 2006. She stated the light industrial use was adopted in 1998 and was in place when the application was filed in 2003, which was denied. She stated there was an application submitted in 1996, in a B-2 district which was approved. She stated Ms. Hudson and the previous Zoning Administrator stated this use needed a CUP and did not feel this use qualified as light industrial. She stated regarding the 15-2.2311, she did not believe an internal review

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prior to a permit qualified as a decision made pursuant to 15-2.2311. She stated when Ms. Hudson renders decisions, she checks with the Director of Planning and Zoning and the County Attorney's office; the only appealable decision would be the Zoning Administrator's final determination and in this case the final determination was the issuance of the permit. She stated the issuance of the permit was null and void because staff believed a CUP was needed.

Mr. Beauch asked Ms. Roberts to explain why this would not fit under the current definition.

Ms. Roberts stated it was clearly intended for public facilities.

Mr. Beauch asked what led her to that conclusion.

Ms. Roberts stated she thought of Quarles as a private utility company.

Ms. Kirkman asked if this storage tank was regulated the same as other utilities and how were the rates for propane gas regulated.

Ms. Roberts stated she was not sure.

Ms. Kirkman stated they were not regulated.

Ms. Roberts stated there were specific requirements in the ordinance that facilities would need to follow.

Mr. Beauch asked if the BZA turned this down and the applicant reapplied then Ms. Hudson would need to make a decision whether the application met the new definition.

Ms. Roberts stated Ms. Hudson would make a decision but the Planning Commission would make a recommendation to the Board of Supervisors.

Ms. Kirkman asked Ms. Roberts to give a reason why it would not meet the current definition.

Ms. Roberts stated the issue was the former definition for the matter at the meeting tonight.

Mr. Ingalls stated the applicant appealed the current decision and was a valid question.

Mr. Beauch asked Ms. Roberts if Ms. Hudson had decided against the current definition also.

Ms. Hudson stated the determination rendered regarding CUP's being required for propane storage tanks was based on code section 28-37, which stated if a use was not listed in a table they may apply for a CUP for a use not listed.

Ms. Kirkman asked why this was not considered a public facility which was listed.

Ms. Roberts stated Ms. Hudson advised, currently a propane storage facility was not a use listed and therefore under the ordinance would require a CUP and the granting of the CUP would have nothing to do with the determination of the Zoning Administrator.

Ms. Kirkman stated her understanding of the second appeal was that the use was not listed and required a CUP; the appellant appealed that and stated under M-1 by right the use was listed as a public facility. She asked staff why it did not meet the definition.

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Ms. Roberts stated that was the Zoning Administrators determination to make.

Ms. Kirkman stated she wanted to know the thinking of why it did not meet the definition.

Ms. Hudson stated she did not address the definition of a public facility, she looked at the fact that the use was not listed in the table and would require a CUP.

Ms. Kirkman stated she did not see in the permit application that the purpose of the tank was for distribution of gas to offsite privately owned residents and in reviewing the permits, the applicants knew a gas tank was being installed by Quarles and asked if the applicant was aware of what the tank would be used for.

Ms. Roberts stated that was correct.

Mr. Ackermann opened the public hearing for public comment.

With no one coming forward, Mr. Ackermann closed the public hearing for public comment.

Mr. Ackermann asked if Mr. Leming would like to rebuttal.

Mr. Leming stated on the original application the owner was listed as Hilldrup Storage and the tenant was shown as Quarles. He stated the description on the application was provided and correct. He stated based on the application, staff would have been aware there was a tenant as listed on the application. He stated he assumed when the violation was issued and the determination was issued there would have been some review of the ordinance, which would have been the correct ordinance under the current definition. He stated he assumed the Zoning Administrator rejected the contention that it met the definition of light industrial and public facility utility. He stated this would have been the first interpretation of the issue since the ordinance changed in October 2006. He stated it was clear as the ordinance stood currently, there was no violation because of the definitions and the determination was correct. He stated this was a lawful and complied with the ordinance and the determination was wrong. He stated there were only three or four vehicle trips per day. He asked that the Board find the notice of violation was issued in error and that the determination of the Zoning Administrator under the current definition was also in error.

Ms. Roberts stated if the BZA was leaning toward the decision of meeting the current use, that did not mean there was no violation. She stated at the time the permits were issued, the applicant needed a CUP, which would make the permits null and void.

Mr. Ackermann closed the public hearing. He stated the issue of public facility utility was a specific issue in this case. He stated the gas listed was natural gas and did not list oil. He stated most of the items listed within the definition were owned by private companies.

Motion:

Ms. Kirkman made a motion to uphold the notice of violation in case A08-4/2800483. She stated her reasons were she believed there was something qualitatively different about propane gas then other goods. She stated she did not believe it met the definition of storage or light industrial use, it did not mention specifically volatile fuels and clearly did not meet the previous or current definition of public facility and clearly did not meet the former definition, which specified it needed to be publicly operated. She also did not believe it met the current definition because it was listed as heating fuel in there materials and heating fuel was not a utility. She stated she believed the issuance of building permit signed by a building agent did not constitute a decision or determination by a zoning official in administering the zoning chapter.

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Mr. Ackermann seconded the motion. He stated he shared the concerns of not meeting the conditions of the ordinance at that time so this could be considered a non-listed use and needing a CUP.

Mr. Ingalls stated he would not support the motion because a determination was made at the time of the application and there was no evidence the definition discussed was used and the when zoning department rules on a case it was making a determination that the county would need to rely on. He stated it was in the record that the applicant paid for a zoning review and was completed and the permit was approved.

Mr. Beauch stated he would not be able to support the motion either. He stated he would not debate the issue of which time period was used because he felt both were used and he felt Ms. Hudson clearly stated she used the current definition; under the current definition it was clear that building structures related to the furnishing of utility service such as gas was exactly what the issue was about. He stated there was no need to debate who owned public facilities because a definition was provided. He stated in the definition it did not state who would need to own it.

Mr. Overbey stated he would not be able to support the motion for all of the reasons recently stated.

Ms. Kirkman stated some of the reasons put forward were based on the permits issued in the zoning review. She stated looking at the applications stated to install a 30,000 gallon tank and nowhere on the application did it state to construct a propane distribution facility. She stated the application also stated the contractor was Quarles Petroleum and nowhere on the applications did it state that it was for a propane distribution facility.

Mr. Beauch stated the BZA needed to rule whether the Zoning Administrator made the correct decision.

Ms. Kirkman stated there were two decisions, one whether there was a zoning violation and whether the Zoning Administrator decision was correct.

Mr. Gibbons stated he could not support the motion.

Vote:

The motion to uphold the notice of violation in case A08-4/2800483 failed 2-4.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – no

Mr. Overbey – no

Mr. Gibbons – no

Mr. Beauch – no

Motion:

Mr. Overbey made a motion to overturn the appeal of the Notice of Violation in case A08-4/2800483.

Mr. Beauch seconded the motion.

Mr. Overbey made the motion based the discussion previously.

Mr. Beauch stated he agreed.

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Ms. Kirkman stated she would oppose the motion for the same reasons previously stated.

Mr. Ackermann agreed with Ms. Kirkman.

Vote:

The motion to overturn the appeal of the Notice of Violation in case A08-4/2800483 passed 4-2.

Mr. Ackermann – no

Ms. Kirkman – no

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

4. **A08-5/2800567 - H. CLARK LEMING** - Appeal of the Zoning Administrator's determination letter dated July 14, 2008, regarding the zoning requirements for propane storage and distribution tanks.

Motion:

Mr. Beauch made a motion to overturn the appeal of the Zoning Administrator's determination in case A08-5/2800567.

Mr. Overbey seconded the motion.

Mr. Beauch stated the motion was based on the previous discussion.

Ms. Kirkman stated she would oppose the motion to overturn the Zoning Administrator's determination in this matter for the following reasons: she did not believe that a propane storage and distribution facility was a listed use and therefore would require a CUP; secondly, she previously stated the permits were not for a propane distribution facility they were for the installation of a propane tank. She stated even if the permits were for a propane facility, it was clear that it did not meet the requirement or definition of a determination by the Zoning Administrator. She stated it was a building permit issued by building agents. She stated she believed that propane distribution facilities present a potential harm to residents and therefore ought to require a CUP, which was the intent of the Zoning Ordinance.

Mr. Ackermann stated he would oppose the motion and could not see how this would meet any unlisted needs. He stated it was a retail facility, not a wholesale distribution facility and was not a public facility for public use.

Vote:

The motion to overturn the appeal of the Notice of Violation in case A08-4/2800483 passed 4-2.

Mr. Ackermann – no

Ms. Kirkman – no

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

UNFINISHED BUSINESS

None

REPORT BY ZONING ADMINISTRATOR

Ms. Hudson stated she would address some questions of the BZA from the last meeting. She stated regarding the appeals at the Circuit Court nothing has been set for any of the cases. She stated regarding the request from the Chairman to ask the County Attorney's office when the public hearing was opened in the meeting the response was when the applicant comes forward to present his case.

Mr. Ackermann asked about the upcoming meetings.

Mrs. Musante stated there would be five cases in October.

Ms. Kirkman stated at the August meeting a Variance was before the Board that came in after the cutoff for BZA cases to be scheduled and asked why that would happen. She stated the Board and staff have had a number of discussions concerning scheduling. She stated staff needed to stick to the scheduling policies as discussed.

Ms. Hudson stated in the past cases were put on agenda when the agenda may not have been as full.

ADOPTION OF MINUTES

August 26, 2008

Motion:

Mr. Overbey made a motion to approve the August 26, 2008 minutes as presented.

Mr. Ackermann seconded the motion

Vote:

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Beauch – yes

OTHER BUSINESS.

None

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 10:22 PM.

Robert C. Gibbons, Chairman
Board of Zoning Appeals